



DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice includes the summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit your comments including the docket number of the petition by any of the following methods:

1. Electronic Mail: zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. Facsimile: 202-693-9441.

3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Jessica D. Senk, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Jessica D. Senk, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Senk.Jessica@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2021-004-M

Petitioner: Genesis Alkali, LLC, 580 Westvaco Rd., Green River, Wyoming (Zip 82935).

Mine: Genesis Alkali @ WESTVACO, MSHA ID No. 48-00152, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

Modification Request: The petitioner requests a modification of the existing 30 CFR 57.22305 standard to permit an alternative, non-MSHA approved Powered Air Purifying Respirator (PAPR). The petitioner seeks approval for the use of the CleanSpace EX PAPR (CleanSpace

EX) in its Class III underground, trona mine in areas in or beyond the last open crosscut and in areas where methane may enter the air current.

The petitioner states that:

- (a) Genesis Alkali @ WESTVACO is an underground trona mine. The petitioner has provided miners who wished to wear a PAPR voluntarily with one as a means to provide a fresh air flow over their face in a warm environment and to reduce exposure to nuisance dust. Some of the miners who choose to wear a PAPR work in by the last open cross cut. The petitioner historically purchased 3M Airstream Headgear-Mounted PAPRs. 3M discontinued these in 2020.
- (b) Other intrinsically safe (IS) respirators available commercially have been approved by other certification bodies, e.g., European Union and the International Electrotechnical Commission (IEC). However, these other IS PAPRs have not been approved by MSHA pursuant to 30 CFR parts 18 through 36.
- (c) The CleanSpace EX manufactured by CleanSpace was determined to be IS under other certification bodies. CleanSpace is not pursuing MSHA approval.
- (d) The CleanSpace EX's design allows the miners to wear their standard head protection, including cap lamps.
- (e) The CleanSpace EX has been tested and approved as IS under many internationally recognized testing standards. The CleanSpace EX was designed to and is approved pursuant to ATEX "Equipment or Protective System Intended for use in Potentially Explosive Atmospheres Directive 2014/34/EU" and is approved to be marked "I Ml Ex ia I Ma, II 2 G Ex ib IIB T4 Gb, -20°C <Ta<40°C." Additionally, the CleanSpace EX was designed and is approved as IS pursuant to the IEC Certification Scheme for Explosive Atmospheres (IECEX) and is approved to be marked "Ex ia I Ma, Ex ib IIB T4 Gb, IECEX TSA 13.0024X."

- (f) The scientific literature includes peer-reviewed papers, which suggest that there is an equivalent level of safety for miners when IS equipment is approved by either the ACRI2001 standard or relevant international standards.
- (g) The CleanSpace EX was tested to standards that are equivalent to the MSHA ACRI2001 criteria. The CleanSpace EX has been subjected to extensive testing requirements under several North American and International Standards which all available scientific literature and studies have concluded are as effective as testing and approval under MSHA's ACRI2001 criteria.
- (h) All available information supports a determination that use of the CleanSpace EX in the Genesis Alkali @ WESTVACO mine will achieve the same result as the standard.

The petitioner proposes the following alternative method:

- (a) The petitioner requests the use of the CleanSpace EX, which is not MSHA approved, in this mine in areas in or beyond the last open crosscut and in areas where methane may enter the air current.
- (b) Affected mine employees will be trained in the proper use and care of the CleanSpace EX in accordance with the manufacturer's recommendations. Task Training and annual refresher training will be documented using MSHA form 5000-23.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Jessica Senk,

Director,

Office of Standards, Regulations, and Variances.

